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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

- against -

PHILLIP FRANK,

Defenda

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.
★ DEC 14 2006 ★

**AMENDED PRELIMINARY
ORDER OF FORFEITURE**

Criminal No.
CR-06-0040 (JG)

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WHEREAS, in the Forfeiture Allegation of the Indictment in the above-captioned case, the United States sought forfeiture pursuant to 18 U.S.C. 982(a)(7), which requires any person convicted of health care fraud to forfeit any property, real and personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission of the offense alleged in Count One; and

WHEREAS, the defendant, PHILLIP FRANK, was found guilty by a jury of violating Count One of the Indictment by a jury to violating Count One of the Indictment, to wit, knowingly and willfully executing a scheme and artifice to defraud a health care benefit program, to wit: the Medicaid program, and to obtain by means of materially false and fraudulent pretenses, representations and promises, money and property owned by and under the custody and control of said health care benefit program, in connection with the delivery of and payment for health care benefits, items and services; and

WHEREAS, on June 22, 2006, a jury found defendant guilty

of Count One of the Indictment; and

WHEREAS, by virtue of the above, and pursuant to 31 U.S.C. § 5332(b), and Rule 32.2(b) of the Federal Rules of Criminal Procedure, the United States is now entitled to forfeit from the defendant the sum of \$5,070,350.68, which constitutes that gross proceeds of traceable to the commission of the offense.

ACCORDINGLY, it is **HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS** on consent:

1. Pursuant to 18 U.S.C. § 982(a)(7), and Rule 32.2 of the Federal Rules of Criminal Procedure, a Forfeiture Money Judgment in the amount of \$5,070,350.68 shall be entered against the defendant, PHILLIP FRANK.

2. The defendant PHILIP FRANK shall forfeit to the United States the sum of \$5,070,350.68 (the "Forfeited Funds").

3. Upon entry of this Order, the United States Attorney General or his designee is authorized to seize and to conduct any discovery proper in identifying, locating or disposing of the Forfeited Funds, in accordance with Fed. R. Crim. P. 32.2(b)(3).

4. Upon entry of this Order, the United States Attorney General or his designee is authorized to commence any applicable proceedings necessary to comply with the statutes governing the rights of third-parties, including giving notice of this Preliminary Order of Forfeiture.

5. Any petition filed by a third-party asserting an

interest in the Forfeited Funds shall i) be signed by the petitioner upon penalty of perjury, (ii) set forth the nature and extent of the petitioner's right, title or interest in the Forfeited Funds, and (iii) any additional facts supporting the petitioner's claim and relief sought.

6. The United States may also, to the extent practicable, provide direct written notice to any person known to have an alleged interest in the Forfeited Funds as a substitute for publishing notice as to those persons so notified.

7. After the disposition of any motion filed under Fed. R. Crim. P. 32.2(c)(1)(A), and before a hearing on the petition, discovery may be conducted in accordance with the Federal Rules of Civil Procedure upon a showing that such discovery is necessary or desirable to resolve factual issues.

8. If no third-party files a timely claim, the Court shall enter a Final Order of Forfeiture pursuant to Fed. R. Crim. P. 32.2(c), giving the United States clear title to the Forfeited Funds.

9. In the event any third party files a timely claim, upon adjudication of all third-party interests, the Court will enter a Final Order of Forfeiture in which all interests will be addressed.

10. The Court shall retain jurisdiction to enforce this Preliminary Order, and to amend it as necessary pursuant to Fed. R.

Crim. P. 32.2(e).

11. The Clerk of the Court shall forward six (6) certified copies of this Order to Assistant U.S. Attorney Orelia E. Merchant, United States Attorney's Office, Eastern District of New York, One Pierrepont Plaza, 14th Floor, Brooklyn, New York 11201.

Dated: Brooklyn, New York
December 13, 2006

s/John Gleeson

HONORABLE JOHN GLEESON
UNITED STATES DISTRICT JUDGE